

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re: Appeal to the Board of Patent Appeals and Interferences

In re **PATENT APPLICATION** of

Inventor(s): Darrell R. ANDERSON et al.

Appl. No.: 08 746,361

Series Code ↑

Serial No. ↑

Filed: November 8, 1996

Title: Identification of Unique Binding Interactions Between Certain antibodies and the Human B7.1 and B7.2 Co-Stimulatory Antigens

Group Art Unit: 1644

Examiner.: P. Gambel

Atty. Dkt. , P 0275943

M#

1996-30-0283CR

Client Ref

SEP 10 2001

TECH CENTER 1600/2900

PATENT APPLICATION

RECEIVED

34/ JM 9/27/01

Hon. Commissioner of Patents
Washington, D.C. 20231

Date: September 17, 2001

Sir:

1. ☐ **NOTICE OF APPEAL:** Applicant hereby appeals to the Board of Patent Appeals and Interferences from the decision (not Advisory Action) dated _____ of the Examiner twice/finally rejecting claim(s) in this application or in this application and its parent application.
2. ☒ **BRIEF** on appeal in this application attached in triplicate (extendable up to 5 months).
3. ☐ An **ORAL HEARING** is respectfully requested under Rule 194 (due two months after Examiner's Answer- unextendable).
4. ☐ Reply Brief is attached in triplicate (due two months after Examiner's Answer - unextendable).
5. ☐ "Small entity" statement filed: ☐ herewith. ☐ previously.
6. ☐ Fee **NOT** required if/since paid in prior appeal in which the Board of Patent Appeals and Interferences did not render a decision on the merits (35 USC 134).

7. FEE CALCULATION

	Large/Small Entity	Fee Code
If box 1 above is X'd, enter	\$310/155	\$0 119/219
If box 2 above is X'd, enter	\$310/155	\$310 120/220
If box 3 above is X'd, enter	\$270/135	\$0 121/221
If box 4 above is X'd, enter nothing	- 0 - (no fee)	
9. Original due date: September 16, 2001		
9. Petition is hereby made to extend the original due date (1 mo) \$110/\$55		115/215
to cover the date this response is filed for which the (2 mos) \$390/\$195		116/216
requisite fee is attached. (3 mos) \$890/\$445		117/217
(4 mos) \$1390/\$695		118/218
(Usable only if box 2 is X'd— 5 mos) \$1890/\$945	+\$0	128/228
10. Enter any previous extension fee paid <input type="checkbox"/> previously since above		
Original due date (item 8); <input type="checkbox"/> with concurrently filed amendment	-\$0	
11. Subtract line 9 from line 8 and enter: Total Extension Fee		+\$0
12. Statutory Disclaimer Fee		\$110 (148/248)
13. TOTAL FEE ATTACHED =		\$420

(Our Deposit Account No. 03-3975)

(Our Order No. 037003

0275943

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CHARGE STATEMENT: The Commissioner is hereby authorized to charge any fee specifically authorized hereafter, or any missing or insufficient fee(s) filed, or asserted to be filed, or which should have been filed herewith or concerning any paper filed hereafter, and which may be required under Rules 16-18 (missing or insufficiencies only) now or hereafter relative to this application and the resulting Official Document under Rule 20, or credit any overpayment, to our Accounting/Order Nos. shown above, for which purpose a duplicate copy of this sheet is attached. This **CHARGE STATEMENT** does not authorize charge of the issue fee until/unless an issue fee transmittal sheet is filed.

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11/10/2001

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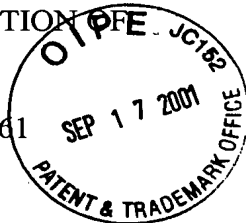
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re PATENT APPLICATION

Darrell R. Anderson et al.

Application No. 08/746,361

Filed: November 8, 1996



Group Art Unit: 1644

Examiner: P. Gambel

TECH CENTER 1600/2900

SEP 20 2001

RECEIVED

Title: IDENTIFICATION OF UNIQUE BINDING INTERACTIONS BETWEEN CERTAIN ANTIBODIES AND THE HUMAN B7.1 AND B7.2 CO-STIMULATORY ANTIGENS

* * * * *

SECTION 116 RESPONSE AND AMENDMENT
AND SUBMISSION OF (UNEXECUTED) SECOND AFFIDAVIT
BY DARRELL R. ANDERSON, Ph.D.

Hon. Commissioner of Patents
Washington, D.C. 20231

Sir:

This reply is further to the Notice of Appeal and Extension of Time submitted on July 13, 2001.

Turning now to the Office Action, the figures stand objected to. This objection will be cured upon allowance.

Claims 29-37 remain rejected under 35 USC §103 as allegedly being obvious over DeBoer et al. (U.S. Patent 5,747,034) and Linsley et al. (U.S. Patent 5,770,197) "in view of art-known procedures and methods to generate recombinant antibodies for diagnostic and therapeutic regimens" as assertedly acknowledged by Applicants at pages 15-20 and 24-27 of the present specification (e.g. Newman et al., BIOTECHNOLOGY, 1992). The position of the Examiner is respectfully traversed.

Applicants acknowledge with respect thereto, at the outset that antibodies to B7.1 were known prior to the invention and also that techniques for generating antibodies to a known antigen were well known. However, notwithstanding these admissions this does not support a conclusion that antibodies as claimed were obvious.

Indeed, as recognized by the Examiner neither DeBoer or Linsley teach antibodies having the unique binding interaction of the subject antibodies. In this regard, the Examiner indicates that Linsley suggests such antibodies because the patentees indicate that anti-B7 antibodies can be used to block interaction of B7 cells with CD28 “or” CTLA-4 expressing cells. (Col. 15, para 7 of Linsley). However, this conclusion is unsustainable. As previously argued, at best the references cited by the Examiner including Linsley et al. arguably would render the claimed invention “obvious to try.” However, this is not the appropriate obviousness standard. In particular, the rejection is unsubstantiated as neither reference supports a conclusion that the production of antibodies possessing the recited binding interaction would have been “reasonably expected.” The outcome is not reasonably expected because of the unique binding interaction of the subject anti-B7.1 contribution, which was unknown prior to the present invention. Based on this unique binding interaction, the subject antibodies do not function equivalently to the prior art antibodies and moreover are uniquely and exquisitely suited for use as immunosuppressants and particularly for treating T cell mediated autoimmune disorders such as psoriasis. This is supported by the prior declaration of Dr. Anderson and the second declaration by Dr. Anderson submitted herewith.

Most especially, the Examiner’s obviousness determination ignores the fact that all other known reported anti-B7.1 antibodies cross-react with CTLA-4. The Examiner’s conclusion further ignores the high degree of conservation of B7 antigens in different species and particularly in humans and cynomolgus monkeys. The fact that Applicants were able to generate anti-B7 antibodies in cynomolgus monkeys of adequate binding affinity to be useful as therapeutics was itself an unexpected outcome. That such antibodies would also fortuitously bind to an epitope the existence of which was heretofore unknown is truly

surprising. The Examiner is again respectfully referred to the two declarations by Dr. Anderson in support of this argument.

As established by the earlier Affidavit by Dr. Anderson, the subject antibodies exhibit distinct binding characteristics vis-a-vis other reported anti-B7.1 antibodies, and particularly those disclosed in the cited Linsley and de Boer et al. Patents. Particularly, the prior art antibodies inhibit the binding interaction of B7.1 with CTLA-4. Whereas the inventive antibodies do not.

Contrary to the Examiner's assertions, it could not have been reasonably predicted that an antibody possessing the binding properties of the invention could have been obtained. Indeed, it was entirely possible that the epitopes responsible for B7.1/CD28 binding and B7.1/CTLA-4 binding could have been prototypic to one another.

Also, it would not have been obvious that an antibody to B7.1 that selectively inhibits the B7.1/CD28 interaction but not the interaction of B7.1/CTLA-4 would be therapeutically effective. Indeed, it would be expected that they might possess very different functional characteristics and that this might affect the therapeutic value of such antibodies. Indeed, this has proved to be the case.

Particularly, it should be emphasized that only blocking the B7.1/CD28 interaction could not have been reasonably predicted to yield therapeutic benefits vis-a-vis blocking the B7.1/CTLA-4 interaction. This could have been predicted because of the biological effects of CTLA-4 and the differences in manner and timing of B7.1 and B7.2 expression during T cell activation. The prior art antibodies of de Boer et al. and Linsley et al. inhibit the interaction of CTLA-4 (CD152) which is a high affinity counter-receptor for both CD80 (B7.1) and CD86 (B7.2). It is further known that B7.1 or B7.2 binding to CTLA-4 initiates an

intracellular signaling cascade that down regulates T cell activation that counteracts CD28-mediated co-stimulation.

However, while the co-stimulatory roles of B7.1 and B7.2 are similar, their actual role in T cell activation, and particularly in T cell diseases such as psoriasis was uncertain. While both of these B7 antigens are upregulated on activated T cells, their temporal expression, density and kinetics are differentially regulated.

As explained in the draft manuscript attached to Dr. Anderson's second affidavit, because CD86 (B7.2) is expressed constitutively and upregulated quickly, it would be expected a to play a more important role in the activation of T cell immune responses than CD80 (B7.1). By contrast, CD80 binds more strongly to CD152 (CTLA-4) and it is hypothesized based therein that its biologically relevant role may be to terminate activation via CD152. However, this had not been established as of the filing date of this application. Consequently, it could *not* have been predicted that an antibody which inhibits the B7.1/CD28 interaction but not the B7.1/CTLA-4 (CD152) interaction would be a useful therapeutic agent. Unexpectedly, it has been shown in vitro and in vivo that antibodies according to the invention exhibit distinct functional properties and that this translates to therapeutic efficacy.

Particularly, and as supported by the second declaration by Dr. Anderson¹, the subject antibodies when utilized in a mixed lymphocyte reaction inhibit IL-2 production in the presence of B7.2. By contrast, the comparative prior art anti-B7.1 antibody, reported by

¹ This Declaration is submitted in unexecuted form. An executed Declaration will be provided to the Examiner shortly.

Nickoloff et al. (L307.4), which inhibits the interaction of B7.1 with CTLA-4 (unlike the inventive antibodies) did not inhibit IL-2 production under the same conditions. It could not have been predicted that merely blocking B7.1/CD28 interaction would yield this result. These functional differences are not suggested by the prior art and provide additional evidence that the inventive antibodies are not equivalent nor are they obvious vis-à-vis previous anti-B7.1 antibodies. This could not have been predicted given the significant role of CTLA-4 during regulation on B7.1 and B7.2 expression. Rather, as B7.2 was thought to play a more significant role, it would have been reasonably expected that blocking only B7.1/CD28 interaction would not be sufficient to significantly effect T cell function.

It is respectfully submitted that the binding differences between the subject antibodies vis-à-vis the prior art, coupled with the different functional characteristics that result from these binding differences provide convincing evidence in favor of the patentability of the subject anti-B7.1 antibodies over the prior art. Quite clearly these differences substantiate a conclusion that the subject antibodies are not equivalent to previous anti-B7.1 antibodies including the reference antibodies relied upon by the Examiner.

While these in vitro functional and binding differences are believed to be sufficient, Applicants further submit that the subject claims should be allowed as it could not have been reasonably expected that antibodies possessing the subject unique binding interaction and in vitro properties would be suitable for clinical usage. Particularly, Applicants have clinical data which substantiates that antibodies according to the invention may be used to treat T cell disorders, particularly psoriasis.

Applicants have shown in preliminary psoriasis human clinical studies using IDEC-114 that the subject anti-B7.1 antibodies appear to be safe, well-tolerated, and clinically

effective in treating psoriasis. Particularly, an antibody according to the invention was shown to effectively reduce psoriatic plaques and to yield improved clinical scores in psoriasis patients. Thus, it has been surprisingly shown that selectively blocking the B7.1:CD28 interaction is an efficient means of immunoregulation in the context of treating T cell mediated diseases such as psoriasis.

For the reasons already enumerated, it could not have been predicted that an antibody that blocks the B7.1/CD28 interaction and not B7.1/CTLA-4 would be therapeutically effective as CTLA-4 was known to play a significant role in T cell down regulation. The significant role of CD152 as a preferred negative regulator of T cell activation is supported by the fact that CD152 deficiencies result in profound lymphoproliferative disorders and early death.

Thus, the subject antibodies are patentable over previous anti-B7.1 antibodies as they possess clinical properties that could not have been reasonably predicted from their binding properties.

This further should be probative of the novel and non-obvious nature of the claimed invention especially as the Examiner seemingly questioned whether it could be reasonably predicted that the different binding interaction of the subject antibodies will correlate to any significant functional difference and clinical efficacy.

In fact, Applicants have now provided probative evidence in the §132 Declaration and Exhibit (draft manuscript attached thereto) that antibodies according to the invention function very differently in vitro and that antibodies according to the invention are clinically effective.

Withdrawal of the §103 rejection based on Linsley et al. and DeBoer is therefore respectfully requested.

Claims 29-37 stand rejected based on double patenting grounds over earlier U.S. Patent 6,113,292. This rejection is overcome by the terminal disclaimer provided herewith.

Claims 29-37 also stand rejected under §102(e) based on Anderson et al. (because of different inventor entity). Upon indication that this case is otherwise allowable, this rejection will be overcome by a §132 Declaration attesting to the fact that the subject inventor made the invention disclosed in this application and that the additional inventor only made a contribution with respect to specific antibody sequences claimed in the earlier application. Withdrawal of this rejection is respectfully requested.

It is anticipated that this reply should place this case in condition for allowance. A Notice to that effect is respectfully solicited. If the Examiner has any questions relating to this application, he is respectfully requested to contact the undersigned.

Respectfully submitted,
Pillsbury Winthrop LLP

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